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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,333	11/26/2001	Douglas B. Quine	F-317	7414

919 7590 03/02/2004

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EXAMINER

MISKA, VIT W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

K13

**Office Action Summary****Application No.**

09/994,333

**Applicant(s)**

QUINE, DOUGLAS B.

**Examiner**

Vit W. Miska

**Art Unit**

2841

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) 23 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medin. With respect to claim 13, the reference discloses an apparatus for displaying and adjusting the product expiration period including display 23 shown as an LCD driver and described at col. 7, line 20 as being coupled to an LCD for displaying the shelf life, sensors 11 for sensing environmental conditions (temperature), controller 19-21 coupled to the sensors and display for adjusting the displayed shelf life. The "expiration date" claimed is not specifically disclosed in the reference, but corresponds to the "shelf life" time period which is adjusted. One of ordinary skill in the art would recognize that any suitable time period for indicating the expiration of the product could be used in Medin. The date on which the product expires would be such an obvious variation of the disclosed shelf life.

2. Regarding method claims 1 and 25, the reference does not specifically set forth how the device is used, but suggests the device is "for use with" various food products at col. 6, lines 23ff. Thus, one of ordinary skill in the art would recognize that the device may be attached to such products in order that the display may be monitored. The default expiration date corresponds to the preset values in memory 20 ( see col. 6, lines 23ff).

3. Claims 2-4, 7-12, 14-15 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medin as applied to claims 1 and 13, above, and further in view of Niemiec et al. The Niemiec reference teaches the sensing of environmental conditions with sensor 408 in connection with drug products and displaying a message if certain trigger points have been reached (see col. 6, lines 61ff). One of ordinary skill in the art having both references would thus have a suggestion for displaying such messages in the Medin device when trigger conditions have been reached as a means for warning the user of adverse conditions, as in claims 2-3. With respect to claims 4, 15 and the remaining claims, it would be further obvious to one skilled in the art that adjustment of the shelf life in Medin may be commenced when certain trigger conditions are met, as shown in Niemiec et al, to provide for incremental adjustment of the shelf life.

4. Claims 5, 6, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medina and Niemiec et al, as applied to claims 4 and 15 above, and

further in view of Fuchs. The latter reference teaches the display of messages after a device has been opened for predetermined periods of time. One of ordinary skill in the art having these references would have a suggestion of sensing the opening of a container in Medin as an additional variable for adjustment of the shelf life, as shown in Fuchs.

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Medin and Niemiec et al as applied to claim 25 above, and further in view of Travagline et al. The latter reference teaches the display of optimal use condition of a product (between the warning date signal 50 and critical date signal 52). One skilled in the art would have a suggestion of providing such signals in the Medin device to inform the user of the conditions for optimal use of the product.

6. Claims 23-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 703-308-3096. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 703-308-3121. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VM  
2/23/2004



Vit Miska  
Primary Examiner